

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3029 of 1997

and

SPECIAL CIVIL APPLICATION No 3035 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI MULJIBHAI PATEL

Versus

JT REGISTRAR

Appearance:

MR BS PATEL for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2
MR BG JANI for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH
Date of decision: 15/09/1999

COMMON JUDGEMENT

These petitions purporting to be petitions under Article 226 of the Constitution, but which are in substance petitions under Article 227 of the Constitution, raise a common question of law about the jurisdiction of the Board of Nominees of the Registrar of Co-operative Societies, Gujarat State at Ahmedabad in

entertaining and deciding the arbitration suits (also known as Lavad Suits) under Section 96 of the Gujarat Co-operative Societies Act, 1961. The main contention is that the suit filed by respondent No. 3-Bombay Mercantile Co-operative Bank Ltd. being a Multi State Co-operative Society under the Multi State Co-operative Societies Act, 1984 and having its registered office as well as head office in Maharashtra State, was not maintainable before the Board of Nominees in the State of Gujarat.

2. The facts leading to filing of these petitions are similar and may briefly be stated as under :-

2.1 Special Civil Application No. 3029 of 1997 is filed by Govindbhai Muljibhai Patel who had taken a loan of Rs.1,75,000/- in the year 1984 from respondent No.3-Bank to purchase a truck and the petitioner alongwith his two guarantors had executed the documents such as promissory note, deed of hypothecation, letter of guarantee and such other documents in favour of respondent No. 3-Bank at Ahmedabad. Since the petitioner did not repay the dues of the banks, the respondent-bank filed Lavad Suit No. 1576 of 1985 for recovering a sum of Rs.1,94,952-45 on 22.2.1985 before the Board of Nominees at Ahmedabad under Section 96 of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "the Gujarat Act"). The petitioner admitted the dues of the respondent-bank before the Board of Nominees and also paid Rs.1,01,000/- to the bank during pendency of the suit by selling the truck with the permission of the Board of Nominees. After considering the evidence on record, the Board of Nominees directed the defendant i.e. the petitioner herein to repay Rs.93,952-35 with interest and costs. The said judgment and award (Annexure "A" to the petition) was passed on 28.2.1990. Since the petitioner did not pay the decretal dues, the respondent-bank filed recovery proceedings. After receiving the notice in such recovery proceedings, the petitioner filed Appeal No. 251/92 before the Gujarat State Co-operative Tribunal for challenging the above award. Before the Tribunal also, the petitioner gave a purshis admitting the suit claim and prayed for monthly instalments of Rs.10,000/- each from 10.7.1993 and also deposited Rs.12,000/- during pendency of the appeal. The Gujarat State Co-operative Tribunal passed the judgment and award dated 15.7.1993 (Annexure "B" to the petition). Thereafter, in April, 1997 the present petition came to be filed challenging the award passed by the Board of Nominees and confirmed by the Tribunal mainly on the ground of lack of jurisdiction.

2.2 Petitioner in Special Civil Application No. 3035 of 1997, Babubhai M. Pokar, had taken a loan of Rs.1,75,000/- in the year 1984 from the respondent-bank to purchase a truck. This petitioner also alongwith his guarantors executed the required documents such as promissory note, deed of hypothecation, letter of guarantee and other relevant documents in favour of the respondent-bank at Ahmedabad. Non-payment of the dues required the respondent-bank to file Lavad Suit No. 3595/84 on 19.12.1984 for recovering Rs.1,78,000/- before the Board of Nominees at Ahmedabad under Section 96 of the Gujarat Co-operative Societies Act, 1961. Here also the petitioner admitted the dues before the Board of Nominees and paid some amount after filing of the suit. The Board of Nominees considered the evidence on record and passed the award requiring the petitioner herein to repay Rs.1,78,000/- with interest and costs. The said award was passed on 30.6.1992 and is at Annexure "A" to the petition. Since the petitioner did not pay the decretal dues, the respondent-bank initiated recovery proceedings and after being served with the notice in the said proceedings, the petitioner filed Appeal No. 253/92 before the Gujarat State Co-operative Tribunal challenging the award of the Board of Nominees. In this case also, the petitioner gave an admission purshis admitting the suit claim and prayed for monthly instalments of Rs.5,000/- each starting from 10.7.1993 and also stated that they had already deposited Rs.1,50,393/- after filing of the suit and credit of the said amount have been given. The Tribunal delivered the judgment dated 15.7.1993 taking into consideration the aforesaid purshis. Thereafter in April, 1997 the petitioner filed the present petition for challenging the award of the Board of Nominees as confirmed by the Tribunal.

3. At the hearing of these petitions, Mr BS Patel, learned counsel for the petitioners raised the following contentions :-

- (i) Respondent No. 3 is a co-operative society having been registered under the provisions of the Bombay Co-operative Societies Act, 1925 and has its registered office as well as head office at Mumbai. The respondent-bank is also a Multi State Co-operative Society registered under the provisions of the Multi State Co-operative Societies Act, 1984 (hereinafter referred to as "the Multi State Act"). Hence, the provisions of the said Multi State Act are applicable to the

respondent-bank and, therefore, only the Central Registrar appointed under the said Multi State Act has the jurisdiction to entertain and try such a suit.

(ii) Assuming that the jurisdiction to decide the present suits was not vested with the Central Registrar under the Multi State Act, the suits could have been filed only before the Board of Nominees at Mumbai as the registered office as well the head office of the respondent-bank is at Mumbai and that the Board of Nominees at Ahmedabad or any other place in Gujarat has no jurisdiction to entertain and try the present suits.

(iii) In any view of the matter, even if the powers of Central Registrar have been conferred upon the State Registrar by notification dated 16.9.1985 (Annexure "F" to the petition), the powers of the Central Registrar under the Multi State Act are delegated only to the Registrar of Co-operative Societies of the concerned State and the Registrar could not have further delegated the said powers to his Nominees.

(iv) The petitioners have also disputed calculations of interest made by the respondent-bank.

4. On the other hand Mr BG Jani, learned counsel for the respondent-bank has vehemently opposed the petitions and has submitted that the Board of Nominees at Ahmedabad did have the jurisdiction to entertain and try the present suits. He has further submitted that the petitions are filed after gross delay and that the petitioners had admitted the dues before the Board of Nominees as well as the Gujarat State Co-operative Tribunal and had prayed for instalments. Hence, it is not open to the petitioners to challenge the jurisdiction of the Board of Nominees and the Tribunal under the Gujarat State Co-operative Societies Act, 1961.

As far as the challenge to the computation of interest is concerned, it was submitted that the interest was calculated as per the contracts and that the petitioners had admitted the dues and the Board of Nominees and the Co-operative Tribunal had also passed the awards on that basis. Hence, it is not open to the petitioners to challenge the computation of interest.

5. Before dealing with the contentions urged on

behalf of the petitioners, it is necessary to set out the relevant provisions of the Multi State Co-operative Societies Act, 1984 and the notification dated 16.9.1985 under the said Act. The Multi State Co-operative Societies Act, 1984 is an Act to consolidate and amend the law relating to co-operative societies with objects not confined to one State and serving the interests of members in more than one State. The Act applies to all co-operative societies, with objects not confined to one State, which were incorporated before the commencement of the Act. The Central Registrar of Multi State Co-operative Society is appointed under Section 4(1) of the Act. Section 74(1) of the said Act reads as under :-

"74.(1) Notwithstanding anything contained in any other law for the time being in force, if any dispute (other than a dispute regarding disciplinary action taken by multi-State co-operative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947) touching the constitution, management or business of a multi-State co-operative society arises -

(a)

(b) between a member, past member or a person claiming through a member, past member or deceased member and the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or

(c)

(d)

such dispute shall be referred to the Central Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute :

... ..
... ..

Admittedly, the respondent-bank is not a national co-operative society as specified in Schedule II to the Act and, therefore, we are not concerned with the proviso

to sub-section (1). Sub-sections (2) and (3) read as under :-

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-State co-operative society, namely :-

(a) a claim by the multi-State co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the multi-State co-operative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c)

(3) If any question arises whether a dispute referred to the Central Registrar is or is not a dispute touching the constitution, management or business of a multi-State co-operative society, the decision thereon of the Central Registrar shall be final and shall not be called in question in any court."

Section 76 provides that the Central Registrar may, on receipt of the reference of dispute under Section 74, elect to decide the dispute himself or transfer it for disposal to any other person who has been invested by the Central Government with powers in that behalf.

Section 4(1) provides for appointment of the Central Registrar of Co-operative Societies. Section 4(2) provides as under :-

"(2) The Central Government may by notification, direct that any power exercisable by the Central Registrar under this Act (other than the power of registration of a multi-State co-operative society) shall in relation to such

society, and such matters as may be specified in the notification be exercisable also by any other officer of the Central Government or of a State Government as may be authorised by the Central Government subject to such conditions as may be specified therein:

Provided that no officer of a State Government shall be empowered to exercise such power in relation to a national co-operative society :

Provided further that no officer of a State Government below the rank of the Registrar of Co-operative Societies shall be empowered to exercise any power exercisable by the Central Registrar under Section 87."

Section 87 provides for the power of attachment before award.

In exercise of the powers conferred by Section 4(2) of the said Act, the Central Government has issued notification dated 16.9.1985 (Annexure "F") directing as under :-

"The powers exercisable by the Central Registrar of Co-operative Societies under the Act (other than the power of registration of a multi-state co-operative society or the amendment of the bye-laws of a multi-state co-operative society) shall be exercisable also by the officers specified in column 2 of the Table to the notification subject to the condition, inter alia, that the powers exercisable by the Central Registrar under Section 87 shall be exercisable only by these officers of the State Governments as are not below the rank of the Registrar of Co-operative Societies."

In the table to the said notification, the relevant entry reads as under :-

Sr.No. Officers Juris-
diction

"6. Registrar of Co-operative The State
Societies appointed under of
section 3 of the Gujarat Gujarat

Co-operative Societies Act,
1961.

6. As far as the provisions of the Gujarat Co-operative Societies Act, 1961 are concerned, the same are applicable to the whole of the State of Gujarat. As per definition clause in Section 2(7) :

"co-operative bank" means a society registered under this Act and doing the business of banking, as defined in clause (b) of Section 5(1) of the Banking Companies Act, 1949."

The society is defined by section 2(19) as under:-

"2.(19) "society" means a co-operative society registered, or deemed to be registered, under this Act."

Section 160 reads as under :-

"160. Repeal, saving and construction - (1) The Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925) (hereinafter referred to as "the said Act") is hereby repealed :

... ..
... ..

(2) All societies registered or deemed to be registered under the said Act the registration of which was in force immediately before the commencement of this Act, shall on such commencement to be deemed to be registered under this Act;

The Registrar is defined by Section 2(17) as under :-

"2.(17) "Registrar" means a person appointed to be the Registrar of Co-operative Societies under this Act; and includes to the extent of the powers of the Registrar conferred on any other person under this Act, such persona and includes an Additional or Joint Registrar."

Section 96 of the Gujarat Act, in so far as the same is relevant reads as under :-

"96. Disputes - (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business of a society shall be referred in the prescribed form either by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar, if the parties thereto are from amongst the following :-

(a)

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society;

(c)

(d) a surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society under section 46, whether such a surety is or is not a member of the society;

(2) When any question arises whether for the purposes of sub-section (1) a matter referred to for decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final."

Explanation to the section also explains the parameters of a dispute referred to in Section 96(1) of the Gujarat Act.

7. So far as the question of jurisdiction is concerned, on facts there is no dispute that the respondent-bank is having its registered and head office at Mumbai but Section 2(19) of the Gujarat Act defines that "society" means a co-operative society registered, or deemed to be registered under this Act, but it is also made clear by Section 160 (2) that the societies which were registered under the Bombay Co-operative Societies Act shall also be treated as having been registered under the Gujarat Co-operative Societies Act.

It is the specific case of the respondent-bank and is not disputed by or on behalf of the petitioners that the respondent bank was registered as a co-operative

society under the Bombay Co-operative Societies Act, 1925 and is, therefore, also deemed to continue as a co-operative society under the Gujarat Act.

In this view of the matter, there cannot be any serious challenge to the jurisdiction of the Board of Nominees in Gujarat State, and in the facts of this case, to the jurisdiction of particularly the Board of Nominees at Ahmedabad to entertain and try the suit in respect of the transactions which took place at Ahmedabad as the money was advanced by the Ahmedabad branch of the respondent bank to the petitioners who are carrying their respective businesses at Ahmedabad. In this view of the matter, the controversy ought to have come to an end.

8. However, Mr BS Patel, learned counsel for the petitioners has reiterated that because the respondent Bank is a Multi-State Society only the Central Registrar under the Multi State Act has the jurisdiction to try and decide the suits in question.

9. It is not possible to accept the aforesaid contention because the notification dated 16.9.1985 clearly provides that the powers of the Central Registrar under the Multi State Act shall be exercisable by the Registrar of Co-operative Societies appointed under Section 3 of the Gujarat Co-operative Societies Act, 1961 and that the said jurisdiction is extended to the State of Gujarat. It is necessary to note at this stage that Section 3 of the Gujarat Act provides for appointment of Registrar of Co-operative Societies for the State and Section 3(2) provides for appointment of Additional Registrars, Joint Registrars, Deputy Registrars and Assistant Registrars. Sub-section (3) of Section 3 further empowers the State Government by general or special order, to confer on a person or persons appointed under sub-section (2) all or any of the powers of the Registrar. Section 2(17) of the Gujarat Act provides that "Registrar" means a person appointed to be the Registrar of Co-operative Societies under this Act and also includes an Additional or Joint Registrar. There is nothing in the provisions of the Multi-State Act or in the provisions of the State Act which would prohibit the exercise of the powers under Section 74 of the Multi-State Act read with the aforesaid notification dated 16.9.1985 by the Nominees of the Registrar appointed under the State Act. The prohibition contained in Section 4(2) of the Multi-State Act read with notification against delegation of powers under Section 87 of the Multi-State Act to an officer of the State Government below the rank of Registrar of Co-operative

Societies cannot and does not whittle down the power of the Registrar to refer the disputes under Section 96 of the State Act to the Board of Nominees.

10. In view of the above discussion, there is no substance in the challenge raised on behalf of the petitioners to the jurisdiction exercised by the Board of Nominees at Ahmedabad and the Gujarat State Co-operative Tribunal in passing awards against the petitioners. As regards the challenge on facts, in view of the fact that the petitions were filed after a considerable delay and the petitioners themselves had admitted the dues before the Board of Nominees and the Tribunal, and had even asked for instalments, the petitioners are estopped from raising any such challenge about computation of interest.

11. The petitions are dismissed with costs. Notice is discharged.

September 15, 1999 (M.S. Shah, J.)
sundar/-